

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA  
THIRD DIVISION

|   |   |                                 |
|---|---|---------------------------------|
| In re:                                    | ) | Bky No. 04-60106 DDO            |
|   | ) |                                 |
| Daniel S. Miller,                         | ) |                                 |
|   | ) | Adv. No. 04-6095                |
| Debtor.                                   | ) |                                 |
| <hr style="width: 30%; margin-left: 0;"/> | ) |                                 |
| Daniel S. Miller,                         | ) | <b>DEFENDANT'S ANSWER</b>       |
|   | ) | <b>TO PLAINTIFF'S COMPLAINT</b> |
| Plaintiff,                                | ) |                                 |
|   | ) |                                 |
| vs.                                       | ) |                                 |
|   | ) |                                 |
| Ronald Kmecik,                            | ) |                                 |
|   | ) |                                 |
| Defendant.                                | ) |                                 |
| <hr style="width: 30%; margin-left: 0;"/> | ) |                                 |

Defendant, for his answer to Plaintiff's Complaint, states as follows:

1. Unless specifically admitted, Defendant denies each and every allegation in Plaintiff's Complaint.
2. Admits the allegations in Paragraphs 1 and 2 of Plaintiff's Complaint.
3. Admits the allegations in Paragraph 3 of Plaintiff's Complaint to the extent it is alleged therein that the Defendant is an individual with a mailing address of RR1, Box 120, Angus, Minnesota 56712.
4. Admits the allegations in Paragraphs 4 and 5 of Plaintiff's Complaint.
5. Admits the allegations in Paragraph 6 of Plaintiff's Complaint to the extent it is alleged therein that the Defendant received payments totaling \$48,625.87 from the Plaintiff

prior to February 3, 2004. Of said payments, \$46,660.31 was received 91 days prior to February 3, 2004.

6. Admits the allegations in Paragraph 7 of Plaintiff's Complaint to the extent it is alleged therein that annexed as Exhibit A to the Complaint are copies of the Debtor's checks 23068 and 22399 totaling \$48,625.87 payable to the Defendant.

7. Admits the allegations in Paragraph 8 of Plaintiff's Complaint to the extent it is alleged therein that the payments referenced in Paragraph 6 of Plaintiff's Complaint were made with respect to debts owed by the Plaintiff to the Defendant.

8. Admits the allegations in Paragraph 9 of Plaintiff's Complaint.

9. Denies the allegations in Paragraph 10 of Plaintiff's Complaint.

10. Admits the allegations in Paragraph 11 of the Plaintiff's Complaint to the extent it is alleged therein that one of the payments referenced in Paragraph 6 of Plaintiff's Complaint was made within 90 days prior to February 3, 2004. The larger payment in the amount of \$46,660.30 was made 91 days prior to February 3, 2004.

11. Lacks sufficient information to form a belief as to the truth or falsity of the allegations in Paragraphs 12 and 13 of Plaintiff's Complaint and thus, denies the same placing Plaintiff on his strict proof in connection therewith.

12. Paragraph 14 states a legal conclusion rather than a statement of fact and thus, Defendant need neither admit nor deny the same.

13. Admits the allegations in Paragraph 15 of Plaintiff's Complaint to the extent

it is alleged therein that the payment referenced in Paragraph 6 of Plaintiff's Complaint was made to the Defendant.

14. Specifically denies the allegations in Paragraphs 16 of Plaintiff's Complaint.

15. Paragraphs 17 through 20 of Plaintiff's Complaint state legal conclusions rather than allegations of fact and thus, Defendant need neither admit nor deny the same.

16. Plaintiff's Complaint fails to state a cause of action upon which relief can be granted.

17. Pending the completion of discovery, Plaintiff reserves all available affirmative defenses including those that must be specially plead under Rules 8 and/or 12 of the Federal Rules of Civil Procedure and those provided under 11 U.S.C. § 547(c).

18. Defendant states that the transfers referred in Paragraph 6 of Plaintiff's Complaint were an exchange for new value, contemporaneous exchange for value and/or that it was the payment of a debt incurred in the ordinary course of the business affairs of the Plaintiff and the Defendant. As a consequence, 11 U.S.C. § 547(c)(1), (2) and/or (4) preclude avoidance of the transfers.

WHEREFORE, Defendant prays for entry of judgment on Plaintiff's Complaint as follows:

1. For the dismissal of Plaintiff's Complaint with prejudice and the denial of any relief thereunder.

2. For its costs and disbursements incurred herein.

3. For such other and further relief as this Court deems just and equitable.

Dated this 7<sup>th</sup> day of October, 2004.

VOGEL LAW FIRM

By:   
\_\_\_\_\_  
Jon R. Brakke #10765

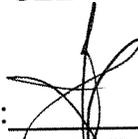
218 NP Avenue  
P.O. Box 1389  
Fargo, ND 58107-1389  
(701) 237-6983  
ATTORNEYS FOR DEFENDANT,  
RONALD KMECIK

### DEMAND FOR A JURY TRIAL

To the extent any of the issues in this proceeding are triable to a jury, Defendant demands trial by jury of the maximum number of persons permitted by law.

Dated this 7<sup>th</sup> day of October, 2004.

VOGEL LAW FIRM

By:   
\_\_\_\_\_  
Jon R. Brakke #10765

218 NP Avenue  
P.O. Box 1389  
Fargo, ND 58107-1389  
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ATTORNEYS FOR DEFENDANT,  
RONALD KMECIK

**RE: Daniel S. Miller, Debtor. Bky No. 04-60106DDO  
Daniel S. Miller v. Ronald Kmecik, Adv. No. 04-6095**

STATE OF NORTH DAKOTA        )  
  ) ss  
COUNTY OF CASS                )

AFFIDAVIT OF SERVICE  
BY MAIL

Lori Thrall, being first duly sworn on oath, does depose and say: She is a resident of County of Cass, City of West Fargo, State of North Dakota, is of legal age and not a party to or interested in the above entitled matter.

On October 8, 2004, your affiant served the following documents:

1. **DEFENDANT'S ANSWER TO PLAINTIFF'S COMPLAINT; and**
2. **INTERROGATORIES AND DEMAND FOR PRODUCTION OF DOCUMENTS, SET I, TO THE PLAINTIFF**

by placing true and correct copies in envelopes addressed as follows:

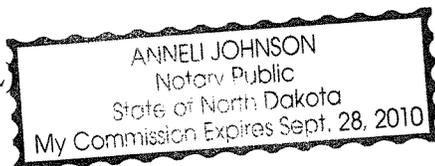
Michael S. Dove  
Gislason & Hunter, LLP  
P.O. Box 458  
New Ulm, MN 56073-0458

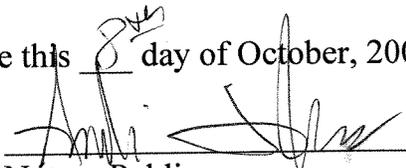
and causing them to be placed in the mail at Fargo, North Dakota with first-class postage prepaid.

  
\_\_\_\_\_  
Lori Thrall

Subscribed and sworn to before me this 8<sup>th</sup> day of October, 2004.

(SEAL)



  
\_\_\_\_\_  
Notary Public